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Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations to American Law Schools

BY SETSUO MIYAZAWA**

I. UC Hastings Symposiums on Japanese Law

The University of California Hastings College of the Law (“UC Hastings”) has organized a symposium on Japanese law every fall since 2012. The topic for the 2012 symposium was “Successes, Failures, and Remaining Issues of the Justice System Reform in Japan” and eight papers were published.¹ The topic for the 2013 symposium was “Corporate Governance in Japan” and three papers were published.² The 2014 symposium was entitled, “The Role of Law and Lawyers for Disaster Victims: A UC Hastings-Waseda Symposium on the Legal Aftermath of the Fukushima Daiichi Nuclear Power Station Disaster” and five papers were published.³

In January 2015, the UC Hastings established the East Asian Legal

* Senior Professor of Law and Senior Director of the East Asian Legal Studies Program, University of California Hastings College of the Law. As the main planner of the symposium on which this symposium issue is based, the author is grateful to the then Acting Provost and Academic Dean Evan Lee, the Associate Dean for Research Scott Dodson, and the then Associate Deans for Global Programs Richard A. Boswell and Keith J. Hand of the University of California Hastings College of the Law for their support of this symposium. The author also wishes to express appreciation to the Daini Tokyo Bar Association, the Japan Society of Northern California, and the *Hastings International and Comparative Law Review (HICLR)* for jointly sponsoring this symposium and would like to further express deep appreciation to the patience and assistance of the editors of the *HICLR*.

1. See Setsuo Miyazawa, *Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue*, 36 *HASTINGS INT’L & COMP. L. REV.* 313 (2013).

2. See David Makman, *The 2013 Symposium on Corporate Governance in Japan*, 11 *HASTINGS BUS. L.J.* 57 (2015).

3. See Setsuo Miyazawa, *The Role of Law and Lawyers for Disaster Victims: A UC Hastings-Waseda Symposium on the Legal Aftermath of the Fukushima Daiichi Nuclear Power Station Disaster*, 16 *ASIAN-PAC. L. & POL’Y J.* 116 (2015).

Studies Program. Keith J. Hand is its Director, while I am its Senior Director. The East Asian Legal Studies Program has been the main organizer of annual symposiums on Japanese law since. The 2015 symposium was entitled, "Glass Ceiling for Female Professionals, Executives, and Managerial Employees in Japan: 30th Anniversary of the EEOA and Prime Minister Abe's 'Womenomics'" and four papers were published.⁴ The East Asian Legal Studies Program will maintain its commitment the enrichment of research literature on East Asian law and legal institutions through organizing seminars like these and publishing papers presented at them.

II. The 2016 UC Hastings Symposium on Japanese Law

The topic of the 2016 symposium was "Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations to American Law Schools." The symposium was held on November 18, 2016.

In March 2016, the UC Hastings signed a cooperation and exchange agreement with the Daini Tokyo Bar Association, commonly called *Niben* in Japanese.⁵ *Niben* is one of the three bar associations in Tokyo and the second largest bar association in both Tokyo and all of Japan.⁶ This symposium commemorated the signing of the cooperation and the exchange agreement between UC Hastings and *Niben*. *Niben* participated in the

4. See Setsuo Miyazawa, *Glass Ceilings for Female Professionals, Executives, and Managerial Employees in Japan: 30th Anniversary of the EEOA and Prime Minister Abe's 'Womenomics'*, 39 HASTINGS INT'L & COMP. L. REV. 389 (2016).

5. About *Niben*, see DAINI TOKYO BAR ASSOCIATION, <http://niben.jp/english/> (last visited Jan. 21, 2018). The agreement provides, among other activities, that *Niben* may nominate a member as a candidate for a Riesenfeld Scholarship in the LL.M. program at the UC Hastings, while the UC Hastings may nominate its student for a summer internship arranged by *Niben*.

6. Japanese attorneys are required to join both the national bar association called the Japan Federation of Bar Associations (*Nihon Bengoshi Rengokai*) and a local bar association (*bengoshikai*). See JAPAN FEDERATION OF BAR ASSOCIATIONS, <https://www.nichibenren.or.jp/en/> (last visited Jan. 21, 2018). Japan is divided into 50 district court jurisdictions. See Supreme Court of Japan, COURT SYSTEM OF JAPAN, http://www.courts.go.jp/english/judicial_sys/Court_System_of_Japan/index.html#03 (last visited Jan. 21, 2018). Each district court jurisdiction has one local bar association, except the jurisdiction of the Tokyo District Court, which has three bar associations, namely, the Tokyo Bar Association (established in 1893), the Daiichi Tokyo Bar Association (established in 1923), and the Daini Tokyo Bar Association (established in 1926). As of January 1, 2018, the Japan Federation of Bar Associations had 40,069 members, while the Tokyo Bar Association had 8,249 members, the Daiichi Tokyo Bar Association had 5,201 members, and the Daini Tokyo Bar Association had 5,404 members. See *Membership Data*, JAPAN FEDERATION OF BAR ASSOCIATIONS, https://www.nichibenren.or.jp/library/ja/jfba_info/membership/data/180101.pdf (last visited Jan. 21, 2018).

symposium and was a co-sponsor with the Japan Society of Northern California and the *Hastings International and Comparative Law Review*.

Traditionally, Japan has been known for its small bar. As of March 31, 2016, there were 37,680 registered practicing attorneys (*bengoshi*) in the country with approximately 127 million inhabitants, with one attorney for every 3,373 inhabitants.⁷ In contrast, France, Germany, the United Kingdom, and the United States had one lawyer for every 1,071, 497, 406, and 264 inhabitants, respectively.⁸ Even Japan's largest law firm had only 508 attorneys in 2016,⁹ while the largest law firm in the United States had 4,363 attorneys and 82 firms in the United States had more than 509 attorneys in 2016.¹⁰ Furthermore, the Japanese Supreme Court's mandatory apprenticeship at the Legal Training and Research Institute (*Shiho Kenshujo*) for those who have recently passed the National Bar Examination (*Shiho Shiken*) is still mostly designed to train lawyers for domestic litigation.¹¹ Training for transactional and cross-border practices is very limited.

Yet, the Japanese bar has been expanding. The number of attorneys has doubled in 15 years, going from 18,243 in 2001 to 37,680 in 2016, whereas it took 29 years to double from 9,106 in 1972 to 18,243 in 2001.¹² Incorporation of law firms started in 2002 and the number of incorporated firm exceeded 900 in 2015,¹³ while the number of in-house attorneys increased more than ten times from 146 in 2006 to 1,707 in 2016.¹⁴

The Japanese bar is also changing in many respects, and internationalization, or globalization, of legal works is one of those changes. The Japanese legal market has been increasingly opened to foreign-licensed lawyers and the number of foreign-licensed lawyers registered as "registered

7. See Japan Fed'n of Bar Associations, WHITE PAPER ON ATTORNEYS 2016 31, 40 (2016).

8. Japan Fed'n of Bar Associations, WHITE PAPER ON ATTORNEYS 2016, at 40, 43.

9. *Id.* at 46.

10. See *America's Largest 350 Law Firms*, INTERNET LEGAL RESEARCH GROUP, <https://www.ilrg.com/nlj250> (last visited Jan. 21, 2018).

11. The training period was two years until 1999. Trainees spent the first four months at the Institute itself, primarily studying civil judging, criminal judging, civil lawyering, criminal defense, and prosecution. They spent the next sixteen months in actual apprenticeship training, with four-month field placements in civil division and criminal division of a court, prosecutor's office, and law firm. Following the field placements, they return to the Institute for four more months of instructions in practice-related skills and a final examination. The training period is currently one year, while the contents of training remain largely same. See Daniel H. Foote, *The Trials and Tribulations of Japan's Legal Education Reforms*, 36 HASTINGS INT'L & COMP. L. REV. 369, 382, 404 (2013).

12. Japan Fed'n of Bar Associations, *supra* note 7, at 31.

13. *Id.* at 48.

14. *Id.* at 78.

foreign lawyers” (*gaikoho jimu bengoshi*) reached 391 in 2016.¹⁵ While they are principally allowed to practice the law of their primary qualification, they may now employ Japanese attorneys or form a joint enterprise with a Japanese law firm. On the other hand, Japanese corporate law firms are strengthening their transactional and cross-border expertise, partly by sending their attorneys to Anglo-American law schools, typically to LL.M. programs in the United States. The Japan Federation of Bar Associations (“JFBA”) itself has been strengthening its international activities, particularly in the areas of public interest lawyering, international human rights, and international bar associations. The 2016 edition of the JFBA’s White Paper on Attorneys featured “International Activities of Lawyers and the Role of Bar Associations.”¹⁶

Therefore, the 2016 symposium was organized to explore the following inquiries: how Japanese lawyers have been coping with a globalizing legal market; how much and in what way have Japanese lawyers become globalized; achievements of Japanese lawyers; challenges of Japanese lawyers; and finally what they expect from American law schools in their effort of globalization.

We were very fortunate to have four exemplary members of *Niben* as main speakers to tackle these questions. The keynote speaker, Akira Kawamura, is a pioneer in cross-border legal practice in Japan and a former President of the International Bar Association (IBA).¹⁷ Additionally, other speakers discussed the globalization of business lawyering¹⁸ and globalization of public interest lawyering.¹⁹ The fourth speaker examined the role of national and local bar associations in facilitating globalization of Japanese lawyers.²⁰ Furthermore, each speaker was requested to discuss his expectations of American law schools in helping globalization of Japanese lawyers. Finally, speakers were invited from the Japan Society of Northern California and UC Hastings to contribute their perspective.

15. *Id.* at 51. About the system of registered foreign lawyers, see “*Gaiben*” *Registered Foreign Lawyers*, THE MINISTRY OF JUSTICE, <http://www.moj.go.jp/ENGLISH/information/gjb.html> (last visited Jan. 21, 2018).

16. Japan Fed’n of Bar Associations, *supra* note 7, at 1-29.

17. See Akira Kawamura, ANDERSON MÖRI & TOMOTSUNE, <http://www.amt-law.com/en/professional/profile/akk> (last visited Jan. 21, 2018).

18. See Yoshimichi Makiyama, KITAMURA & MAKIYAMA, <http://www.kitamuralaw.com/staff.html> (last visited Jan. 21, 2018).

19. See Shin’ichi Sugiyama, HARAGO & PARTNERS LAW OFFICES, <http://www.hap-law.com/sugiyama.html> (last visited Jan. 21, 2018).

20. See Tatsu Katayama, ANDERSON MÖRI & TOMOTSUNE, <http://www.amt-law.com/en/professional/profile/TAK> (last visited Jan. 21, 2018).

The symposium was structured in the following way:

13:00-13:15: Welcome Speeches

Moderator: Setsuo Miyazawa, Senior Professor of Law and Senior Director of the East Asian Legal Studies Program, UC Hastings.

Speakers:

- Evan Lee, Acting Provost and Academic Dean, Professor of Law, UC Hastings.
- C. Lawrence Greenwood, President, Japan Society of Northern California; former US Ambassador to the Asia Pacific Economic Cooperation group.
- Shouichi Nagayoshi, Deputy Consul General, Consulate General of Japan.

13:15-14:15: Keynote Speech.

Moderator: Evan Lee.

Speaker: Akira Kawamura, Of Counsel, Anderson Mori & Tomotsune; former President, International Bar Association.

Discussant: David A. Makman, Chairman of the Board, Japan Society of Northern California; Law Offices of David A. Makman.

14:30-15:30: Panel 1: Globalization of Business Lawyering

Moderator: Keith J. Hand, Associate Dean for Global Programs, Director of the East Asian Legal Studies Program, and Professor of Law, UC Hastings.

Speaker: Yoshimichi Makiyama, Partner, Kitamura & Makiyama.

Discussant: Abraham Cable, Professor of Law, UC Hastings.

15:30-16:30: Panel 2: Globalization of Public Interest Lawyering

Moderator: Richard A. Boswell, Associate Dean for Global Programs and Professor of Law, UC Hastings.

Speaker: Shinichi Sugiyama, Partner, Harago Law Office.

Discussant: Naomi Roht-Arriaza, Distinguished Professor of Law, UC Hastings.

16:45-17:45: Panel 3: Role of Bar Associations

Moderator: Setsuo Miyazawa.

Speaker: Tatsu Katayama, Partner, Anderson Mori & Tomotsune.

Discussant: Richard Zitrin, Lecturer in Law, UC Hastings.

17:45-18:00: Closing: Setsuo Miyazawa

This symposium issue consisted of papers contributed by the four main speakers. The English-language literature on Japanese lawyers is still limited.²¹ I hope that this symposium issue will make important contributions to the literature by providing papers written by Japanese lawyers in order to facilitate international practical and scholarly collaborations.

21. Most recent works on Japanese lawyers include: Mayumi Nakamura, *Legal Reform, Law Firms, and Lawyer Stratification in Japan*, 1 ASIAN J. OF L. & SOC'Y. 99, 99-123 (2014); Setsuo Miyazawa, Atsushi Bushimata, Keiichi Ageishi, Akira Fujimoto, Rikiya Kuboyama, & Kyoko Ishida, *Stratification or Diversification? 2011 Survey of Young Lawyers in Japan*, in EAST ASIA'S RENEWED RESPECT FOR THE RULE OF LAW IN THE 21ST CENTURY: THE FUTURE OF LEGAL AND JUDICIAL LANDSCAPES IN EAST ASIA 31-46 (Setsuo Miyazawa, Weidong Ji, Hiroshi Fukurai, Kay-Wah Chan, and Matthias Vanhullebusch ed., 2015); Kyoko Ishida, *Why Female Lawyers Get Less – Multiple Glass Ceiling for Japanese Female Lawyers*, 39 HASTINGS INT'L & COMP. L. REV. 411 (2016); Kyoko Ishida, *Deterioration or Refinement? Impacts of an Increasing Number of Lawyers on the Lawyer Discipline System in Japan*, Vol. 24, Issue 3, INTERNATIONAL JOURNAL OF THE LEGAL PROFESSION (2017); Kay-Wah Chan, *What Have They Done Wrong? An Analysis of Disciplinary Actions against Japanese Lawyers: Past and Present*, in Keiichi Ageishi, Hiroshi Otsuka, Katsuhiro Musashi, and Mari Hirayama (eds.), *The Legal Process in Contemporary Japan: A Festschrift in Honor of Professor Setsuo Miyazawa's 70th Birthday*, SHINZANSHA, 625-642 (2017).